RIGHT TO APPROPRIATE MINERALS IN SOLUTION. — The right of the owner of the soil to the beneficial use of percolating waters is well established. Thus, in the course of mining operations on his own land he may drain off all the percolating waters, though he thereby causes his neighbor's well to become dry.[1] And even if by withdrawing the support of such water he causes adjoining land to subside, he incurs no liability.[2] But when the support withdrawn, though liquid, is not mere water, the question is of greater difficulty. The adjoining landowner has been allowed to recover when the subsidence was due to the withdrawal of quicksand [3] or of wet running silt,[4] on the ground that these substances differed so materially from water that the rules governing percolating waters had no application.[4] And a similar result was reached in a case where pitch was thus won from the land of another.[5] On the other hand, a recent English decision has refused relief in a case where the defendant was pumping from his own mine brine which contained salt of the plaintiff's dissolved by water in the latter's mine. *The Salt Union, Ltd.* v. *Brunner, Mond & Co.*, [1906] 2 K. B. 822. The court distinguished this from the previous cases, partly on the ground that no question of support was here involved, and partly because brine was more analogous to water than quicksand or silt. But these distinctions are not very helpful. If the withdrawal of support in cases of percolating waters gives no cause of action, it would seem clear that the question of support is not what determines liability. And since this ground for distinction fails, the only difference must be in the degree of similarity which the substances respectively bear to water. A much more satisfactory test, however, is found in the American cases, which regard simply the fluidity of the substance. Consequently, no action has been allowed against a landowner who abstracted natural gas [6] or petroleum [7] from his land, although he thereby reduced the amount available to his neighbor.

Correlative rights in percolating waters are denied on the broad grounds of public policy.[8] To apply any set of rules, such as govern surface waters in defined streams, to the case of underground substances of such uncertain and concealed character as those above considered, would not only be difficult and impracticable, but would also too greatly restrict the improvement of land for mining, agricultural, and similar purposes. If a mine-owner must pay damages for any of his neighbor's salt that he might pump up with the brine from his own mine, he would be uncertain of his rights and overcautious in his operations. As a result the public would lose the benefit of the most complete exploiting of mineral resources. Furthermore, if an injunction were to be allowed against one landowner, it must be granted against the other as well, and consequently the salt might be left altogether unused. Whatever the nature of the liquid matter, if in fact it is liquid — using that word in a broad sense, — these considerations apply with equal force.

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[1] Acton *v.* Blundell, 12 M. & W. 324.
[2] Popplewell *v.* Hodkinson, L. R. 4 Exch. 248.
[3] Cabot *v.* Kingman, 166 Mass. 403. See 10 HARV. L. REV. 183.
[4] Jordeson *v.* Sutton, etc., Co., [1899] 2 Ch. 217.
[5] Trinidad Asphalt Co. *v.* Ambard, [1899] A. C. 594. See 13 HARV. L. REV. 299.
[6] Hague *v.* Wheeler, 157 Pa. St. 324. See 7 HARV. L. REV. 369.
[7] Kellog *v.* The Ohio Oil Co., 57 Oh. St. 317.
[8] See Frazier *v.* Brown, 12 Oh. St. 294, 311.